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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

HILDA SANCHEZ,

Plaintiff and Appellant,

v.

NANCY ORALIA GENTIL,

Defendant and Respondent.

B147064

(Los Angeles County
Super. Ct. No. TC012942)

APPEAL from a judgment of the Superior Court of the County of Los Angeles,
James A. Kaddo, Judge. Reversed.

Law Offices of John H. Anderson, John H. Anderson and Troy C. McMahon for
Plaintiff and Appellant Hilda Sanchez.

Avila & Peros, Michael A. Avila, Frank E. Miller and Christopher N. Miner for
Defendant and Respondent Nancy Oralia Gentil.

SUMMARY

In this action for wrongful death, an insurer, acting on behalf of a permissive user under an automobile liability policy, informed the claimant her claim would be resolved within a period that exceeded the applicable statute of limitations, admonished the claimant not to retain an attorney, and failed to notify the claimant of the impending expiration of the statute of limitations in violation of state administrative regulations. Under the circumstances, we hold the trial court erred when it refused to estop the permissive user's assertion of the statute of limitations defense as a bar to the action.

FACTUAL AND PROCEDURAL BACKGROUND

Jose Sanchez, an employee of Nielson Media Research, Inc., was on a business trip on June 7, 1997. He was driving an automobile leased by his employer, and was accompanied by respondent Nancy Oralia Gentil. Sanchez became drowsy and asked Gentil to drive. However, shortly after taking over the wheel, Gentil fell asleep. The automobile traveled off the road and rolled over several times, ejecting Sanchez. Sanchez never regained consciousness, and died several weeks later as a result of head injuries suffered in the accident. Sanchez is survived by his wife, Hilda Sanchez, and a daughter, Kristina, also a plaintiff in this action but not a party to this appeal.

Shortly after her husband's death, Hilda Sanchez (hereafter, Sanchez), submitted a claim to Continental Casualty Company (hereafter, CNA), provider of primary insurance coverage on the vehicle Gentil was driving at the time of the accident. After receiving the claim, CNA told Sanchez it could take as long as a year-and-a-half to resolve her claim, and advised her not to retain an attorney. In October 1999, CNA offered to settle Sanchez's claim for an amount Sanchez believed insufficient. When Sanchez objected to the settlement offer, CNA and the attorney representing both Nielson Media Research and Gentil told her she was without recourse other than to accept CNA's offer because the statute of limitations on her claim had expired. In December 1999, over two years after her husband's death, Sanchez filed this wrongful death action.

Gentil moved for summary judgment contending Sanchez's claim was barred by the statute of limitations. Sanchez opposed the motion asserting Gentil was estopped to assert the statute of limitations as a defense. Sanchez argued CNA, which represented both Nielson Media Research and Gentil in connection with Sanchez's claim, induced her to delay filing the action by admonishing her not to retain counsel and, in violation of state administrative regulations, failed to notify her of the impending expiration of the statute of limitations. (Cal. Code Regs., tit. 10, § 2695.7.) In response, Gentil argued the doctrine of equitable estoppel could not be applied against her because Sanchez never specifically intended to pursue a claim against Gentil, whom she believed was uninsured.

The court granted Gentil's motion. Sanchez appeals.

DISCUSSION

Sanchez concedes her cause of action for wrongful death was filed well after the expiration of the statute of limitations for such actions.¹ However, she argues the trial court erred in refusing to apply the doctrine of equitable estoppel to bar Gentil from relying on the statute of limitations defense. We agree.

As a "permissive user" of the automobile involved in the accident, Gentil was entitled to coextensive coverage with CNA's named insured, Nielson Media Research. A business automobile coverage endorsement to the policy identified Nielson Media Research and its employees as "insureds" for automobiles leased by Nielson Media Research, so long as the automobiles were used in the course of Nielson's business. The endorsement stated Nielson Media Research's "employees . . . can give anyone else permission to use a covered auto the same as [Nielson Media Research]," converting such an individual into a "permissive user insured" for coverage purposes.

¹ The parties agree that either California's one-year limitations period or Nevada's two-year statute of limitations applies to this action. It does not matter for purposes of this appeal which limitations period applies; the action, filed almost 29 months after Jose Sanchez's death, would be barred by both.

Insurance coverage obtains for a permissive user involved in an accident if the individual was driving the automobile with the insured's permission and potential liability arises out of the vehicle's use. (*Travelers Ins. Co. v. Northwestern Mut. Ins. Co.* (1972) 27 Cal.App.3d 959, 962; *Metz v. Universal Underwriters Ins. Co.* (1973) 10 Cal.3d 45, 51 [all policies must include permissive user coverage].) The criteria for permissive use coverage are satisfied here. Gentil became a "permissive user" under the policy when asked by Jose Sanchez to drive the automobile during a business trip on behalf of Nielson Media Research. The same result is dictated by Vehicle Code section 16451 which provides that automobile liability insurance is extended to the named insured or anyone using insured's automobile with express or implied permission. By law, therefore, Gentil was entitled to receive the same treatment and representation CNA was obligated to provide Nielson Media Research, its named insured.

Gentil does not dispute her status as a permissive user insured under CNA's policy. Rather, she insists none of CNA's actions tolled the limitations period on any claims against her on the grounds Sanchez did not speak with her or anyone authorized to speak on her behalf, and never intended to pursue a claim against Gentil. Gentil is mistaken.

Whether Sanchez intended to pursue a claim against Gentil as an individual is irrelevant. Sanchez intended to, and did, assert a timely claim under Nielson Media Research's policy. Under the policy, CNA had a duty to defend Gentil as a permissive user coextensive with its duty to defend Nielson Media Research. (*Northwestern Mut. Ins. Co. v. Farmers' Ins. Group* (1978) 76 Cal.App.3d 1031, 1042 [a permissive user is an insured under the terms of a policy].)

The legal consequences of CNA's actions flow equally to both insureds. The attorney who represented Nielson Media Research and Gentil throughout this proceeding concedes that, by virtue of CNA's conduct, "the statute of limitations may have been tolled as against Nielson." Under standard agency principles, CNA's actions are imputed

to Gentil to the same degree and extent as they are attributed to Nielson Media Research. (*Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1047 [an agent acts for and in place of a principal for the purpose of bringing the principal into legal relations with third persons]; *Gipson v. Davis Realty Co.* (1963) 215 Cal.App.2d 190, 205-206.) To the extent the statute of limitations was tolled on Sanchez's claim against Nielson, it was also tolled against Nielson's co-insured permissive user under the policy.

The misconduct alleged against CNA is sufficient to toll the limitations period. Gentil does not dispute Sanchez's allegations that CNA advised her not to retain an attorney in connection with her claim. Nor does she dispute CNA told Sanchez the claim could take a year-and-a-half to resolve, and failed to inform Sanchez the limitations period on her claim would expire well before that time. CNA's representations may constitute unfair claims practices prohibited by law. (See Ins. Code, § 790.03, subd. (h)(15) [it is an unfair claims practice for an insurer to mislead a claimant regarding the statute of limitations]; § 790.03, subd. (h)(14) [it is an unfair claims practice for an insurer to directly advise a claimant not to retain an attorney].) Each representation, standing alone, constituted a sufficient basis to invoke the equitable doctrine of estoppel. (*Barr v. ACandS, Inc.* (1997) 57 Cal.App.4th 1038, 1056, disapproved on other grounds by *Hamilton v. Asbestos Corp., Ltd.* (2000) 22 Cal.4th 1127, 1147 [doctrine of estoppel to plead a defense of statute of limitations may properly be invoked where a defendant has induced a plaintiff to forbear from pursuing a timely claim]; *Shaffer v. Debbas* (1993) 17 Cal.App.4th 33, 43 [It is sufficient to toll the statute of limitations if "the defendant's conduct in fact induced the plaintiff to refrain from instituting legal proceedings."]; *Herron v. State Farm Mut. Ins. Co.* (1961) 56 Cal.2d 202, 206-207 [an insurer violated the law by telling an insured he need not retain an attorney because a satisfactory settlement would be made].)

Gentil also does not dispute CNA failed to notify Sanchez in advance of the expiration of the limitations period. (See Cal. Code. Regs., tit. 10, § 2695.7(f)

[providing that, for claims not settled by payment on which a claimant is not represented by counsel, an insurer must provide at least 60 days advance written notice of any statute of limitation or other time period on which it may rely to deny the claim.].) At least one court has held an insurer who failed to notify a claimant of the time limitation applicable to a claim was estopped from asserting the statute of limitations defense. (*Spray, Gould & Bowers v. Associated Internat. Ins. Co.* (1999) 71 Cal.App.4th 1260, 1270-1271.)²

For purposes of this appeal, it is not disputed that CNA's actions taken on behalf of its insureds, including Gentil, induced Sanchez to detrimentally refrain from pursuing legal action on her claim. The evidence in the record is sufficient to justify tolling the statute of limitations against Gentil to the same degree and extent as Gentil's counsel concedes it has been tolled against his other client Nielson Media Research, CNA's named insured. (*Shaffer, supra*, 17 Cal.App.4th at p. 43.) The elements of equitable estoppel therefore are satisfied. Accordingly, we conclude the trial court erred in granting summary judgment based on Gentil's assertion of a statute of limitations defense.

DISPOSITION

The judgment is reversed, and the matter remanded for further proceedings consistent with the views expressed herein. Sanchez is awarded her costs on appeal.

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² The trial court refused to apply *Spray, Gould & Bowers* to bar Gentil's reliance on the statute of limitations here because the limitations period in that case was contractual rather than statutory. We fail to see the import of this distinction. The regulation at issue does not distinguish between limitations periods imposed by law, or those for which parties have contracted. Rather, it requires simply that the insurer provide at least 60 days' advance notice of the expiration of "any statute of limitation or other time period requirement upon which the insurer may rely to deny a timely claim." (Cal. Code. Regs., tit. 10, § 2695.7(f), emphasis added.)

BOLAND, J.^{*}

We concur:

JOHNSON, Acting P.J.

WOODS, J.

^{*} Justice of the Court of Appeal, Second Appellate District, Division Eight, assigned to Division Seven by the Chief Justice pursuant to article VI, section 6 of the California Constitution.